

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTHA L. IRWIN,
Plaintiff,

v.

INTERNAL REVENUE SERVICE,
Defendant.

Case Number 07-13023-DT

District Judge David M. Lawson
Magistrate Judge Steven D. Pepe

REPORT AND RECOMMENDATION

On July 20, 2007, Plaintiff filed her Complaint to appeal a decision by the IRS disallowing her a \$7,211 deduction for the removal of 22 ash trees from her property that were infested by the emerald ash borer (Dkt. # 1). All pretrial matters were referred to the undersigned on August 22, 2007, pursuant to 28 U.S.C. § 636 (b)(1)(A) (Dkt. #3). Because more than 120 days passed from the issuance of the complaint without service to the Defendant, on March 5, 2008, the undersigned issued an Order for Plaintiff to show cause in writing why Plaintiff failed to make service of the summons and complaint in this matter (Dkt. #4). Plaintiff filed a timely response to the order on March 23, 2008 by way of letter (Dkt. #5).

A review of the file indicates that service of the summons and complaint has not been made upon the Defendant(s) in this action. While Plaintiff is acting *pro se*, she is not proceeding *in forma pauperis*, thus the obligation of effectuating service in on the Plaintiff. Pursuant to Rule 4 (m), Federal Rules of Civil Procedure, if service of the summons and complaint has not been accomplished within 120 after the filing of the complaint, the Court may dismiss an action without prejudice or direct that service be effected within a specified time. In this case, Plaintiff's response to the undersigned's Order to Show cause, while timely, fails to give reason

for the failure to serve the Defendant. Without addressing directly or indirectly the failure to complete service of the complaint, the response merely recapitulates Plaintiff's belief that her complaint is meritorious and that she wishes for her case to be heard. Over 240 days have passed since Plaintiff filed her Complaint and a review of the docket indicates that service of the summons and complaint still has not been made upon the Defendant(s) in this action.

For the following reasons, **IT IS RECOMMENDED** that this case be **DISMISSED WITHOUT PREJUDICE**. The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local*, 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: April 22, 2008
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***Report and Recommendation*** was served on the attorneys and/or parties of record by electronic means or U.S. Mail on 4/22/08.

s/ Alissa Greer

Case Manager to Magistrate

Judge Steven D. Pepe

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